

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD LEE JOHNSON,

Defendant-Appellant.

UNPUBLISHED

December 1, 1998

No. 200721

Oakland Circuit Court

LC No. 96-148304 FC

Before: White, P.J., and Markman, and Young, Jr., JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), one count of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and one count of assault with intent to commit sexual penetration, MCL 750.520g(1); MSA 28.788(7)(1). Defendant was sentenced to fifteen to thirty years' imprisonment for the criminal sexual conduct convictions, and five to ten years' imprisonment on the remaining two convictions. Defendant appeals as of right, and we affirm.

Defendant and the complainant were husband and wife. On the night of the assault, which lasted over a period of several hours and involved a severe beating, defendant penetrated the complainant's vagina using a cologne bottle and a candle. Defendant sought to admit evidence of prior consensual sexual activity between defendant and the complainant using the cologne bottle and the candle. The trial court indicated that justice would warrant introduction of some evidence, but that the degree would be limited based on the complainant's testimony and/or defendant's choice to take the stand. Later in the trial, the court sustained the prosecutor's objection to defense counsel's inquiry of the complainant whether she ever engaged in any type of sexual practices in the past with the candle or the cologne bottle. On appeal, defendant claims that the trial court abused its discretion by so limiting the questioning of the complainant.

We conclude that any error in refusing to permit the complainant to answer the question was harmless. Sometime after the exchange at issue, the complainant was asked to comment on a letter written by defendant, in which defendant asserted that they had oral sex that night and that because of

his health problems, the couple often had “sex with toys like the Brut bottle or candles.” The witness responded:

No. We didn’t have oral sex that night. Because he did have some impotence problems, we had discussed previous alternate ways of doing things, but not that day and not necessarily with those items, but there was discussion about that problem.

Thus, the complainant, in effect, answered the prior question.

Further, the testimony of force through the beating was so overwhelming that we are satisfied that even if the jury had heard that the complainant had been penetrated consensually by objects such as the cologne bottle and candles in the past, the jury would not have found that there was consent on the night in question.

Affirmed.

/s/ Helene N. White

/s/ Stephen J. Markman

/s/ Robert P. Young, Jr.